

GAHC010146182018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./694/2018

SMTI JYOTI BARMAN
W/O LATE BABUL BARMAN, R/O UJANBAZAR NAMANI CHATRAKAR,
HOUSE NO. 78, UJANBAZAR, GUWAHATI-1, DIST. KAMRUP (M), ASSAM.

VERSUS

SRI PRITAM NATH AND 2 ORS
S/O BHABAN NATH, R/O HOUSE NO. 51, JURPUKHURI PAR, LAMBROAD
NEAR UGRATARA MANDIR, P.S. LATASIL, DIST. KAMRUP (M), ASSAM
(DRIVER OF THE VEHICLE NO. AS-01/BA-5848)

2:SRI DUNAL HAZARIKA
S/O BOLEN HAZARIKA
R/O HOUSE NO. 39
ISLAM PATTY
UJANBAZAR
P.S. LATASIL
DIST. KAMRUP (M)
ASSAM (OWNER OF VEHICLE NO. AS-01/BA-5848)

3:M/S ORIENTAL INSURANCE CO. LTD.
ULUBARI
GUWAHATI -07
(INSURER OF THE VEHICLE NO. AS-01/BA-5848)

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : MR. R C PAUL (R3)

Date of hearing : 01.12.2022

Date of Judgment & Order : 30.01.2023

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

JUDGMENT & ORDER

Date : 30-01-2023

Heard Mr. H. Das, learned counsel for the claimant/appellant and Mr. R.C. Paul, learned counsel for the respondent No. 3/Insurance Company.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed for enhancement of the amount of compensation awarded by the learned Member, MACT No. 1, Kamrup, Guwahati vide Judgment and Award, dated 21.06.2018 in MAC Case No. 311/2016.

3. The case of the claimant/appellant, in brief, is that on 30.11.2014 at about 8.15 p.m., while her son along with his friend was travelling on a motorbike, in front of Hanuman Mandir, Uzan Bazar, under Latasil P.S., they were knocked down by another motorcycle bearing registration No. AS-01/BA-5848, which was driven in a very high speed. As a result of the accident, the victim was thrown to some distance and his head hit the footpath of the road, for which, he sustained grievous injuries all over the body. He was immediately taken to Arya Hospital, Ulubari, Guwahati by 108 ambulance service in critical condition for treatment.

4. The claimant/appellant filed MAC Case No. 311/16 before the Tribunal of learned Member, MACT No.1, Kamrup, Guwahati claiming compensation for an amount of Rs.37,47,752/- (Rupees Thirty Seven Lakhs Forty Seven Thousand Seven Hundred Fifty Two) only for the injuries sustained by her son, namely Sri Prabir Barman.

5. Upon consideration of the averments made in the pleadings of both the

sides, the learned Tribunal formulated the following issues to arrive at a decision on just compensation to be awarded-

“1. Whether claimant, Sri Prabir Barman, sustained injuries in the alleged road accident dated 30.11.14 involving vehicle no. AS-01/BA-5848 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

2. Whether the claimant is entitled to receive any compensation, if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?”

6. The learned Tribunal after due adjudication of the claim petition awarded compensation of Rs.15,45,000/- (Rupees Fifteen Lakhs Forty Five Thousand) only inclusive of NFL, if any, with interest @7% per annum from the date of filing the claim petition till payment by the Insurance Company/respondent No. 3 herein. While deciding the claim, the learned Tribunal held the opinion that as the claimant failed to file any documentary evidence regarding the occupation and income of the injured, the same was not proved, a lump sum amount of Rs.5,000/- (Rupees Five Thousand) was determined as his monthly income. Further, keeping in consideration of the nature of overall medical evidence, the percentage of disability affecting his earning capacity has been assessed at 80% although it is shown as 50% in Exhibit- 4, the certificate issued by MMCH, Guwahati.

7. Being aggrieved by the aforesaid impugned judgment and award, the claimant/appellant has preferred the instant appeal claiming enhancement of the awarded sum on the grounds, *inter-alia*, as follows-

1. That the learned Tribunal failed to appreciate that the son of the appellant had suffered 100% functional disability instead of 80%;

2. That the learned trial Tribunal has failed to compute the actual medical expenses amounting Rs.9,39,124/- (Rupees Nine Lakhs Thirty Nine Thousand One Hundred Twenty Four) incurred on the treatment of the injured;

3. That the learned Tribunal has failed to award any compensation for future prospect of income of the injured based on the settled position of law laid down by the Hon'ble Apex Court in Sarla Verma and Pranoy Sethi cases;

4. That the learned Tribunal failed to appreciate the injured's monthly income at Rs.9,000/- (Rupees Nine Thousand) as a vegetable vendor instead of the amount fixed as income at Rs.5,000/- (Rupees Five Thousand) per month;

5. That the learned Tribunal has not awarded compensation for the loss of amenities of life, pain, suffering etc. as well as the elements of 'the personal loss and the pecuniary loss'.

8. On perusal of the medical evidence of P.W. 5, the doctor, it appears that the injured Prabir Barman suffered hemiparalysis, which is one side paralysis on left side of his body due to brain injury on right side. The doctor further stated that the injured will suffer permanent neurological and physical deficiency throughout his life. Exhibit-4, the disability certificate shows that the injured suffered permanent 50% locomotor disability. A locomotor disability indicates restriction in the movement of the limbs (i.e. arms and legs). One cannot deny the fact that a person, who cannot move his arms and legs is deprived of the capability to work for gain. Needless to say, the injured's position as a vegetable vendor requires physical and mental soundness. The nature of grievous injuries sustained by the injured and resultant impact on his body, as per medical evidence, has permanently impaired his earning capacity as a vegetable vendor, who happened to collect and sell vegetables in market at distant places. Due to permanent paralysis his earning capacity has also been lost permanently.

9. The evidence of P.W. 1 (claimant/mother of injured), P.W. 2 (sister of

injured) and P.W. 3, an independent witness, it transpires that the injured was a vegetable vendor by profession, who used to sell vegetables in the market at Uzan Bazaar river side, Guwahati. The evidence further shows that the injured cannot even stand on his own due to injury caused physical impairment.

10. In *Rekha Jain Vs. National Insurance Company Limited and Ors.*, reported in (2013) 8 SCC 389, the Hon'ble Supreme Court observed as extracted hereinbelow-

“53. For a film actress, the physical appearance particularly the facial features are very important to act in the films and in TV serials. It is in her evidence that on account of the accident her face was disfigured, she has put on weight and has become fat and therefore she is unable to perform the role as an actress in films in future. Having regard to the nature of vocation she has been carrying on and wishes to carry on with in future, the opportunity is lost on account of the disfigurement of her face, to act in the films as an actress either as a heroine or actress in supporting role or any other role to be played in TV serials, albums and also as a model. It is in the evidence of the appellant that as per the District Medical Board of Sambalpur, her permanent disability is 30%. Having regard to the nature of injuries and observations made by this Court and the Karnataka High Court in the cases referred to supra, we have to record a finding of fact that the appellant's permanent disability should be treated as 100% functional disablement as she cannot act in the films and in TV serials in future at all. Therefore, on account of the aforesaid reasons, she has suffered functional disability.

57. In this regard, in Baker case [Baker v. Willoughby, 1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)] , it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.

58. In view of the aforesaid decisions of this Court and various courts and the High Court of Karnataka and authors referred to supra, we have to record the finding of fact having regard to the nature of grievous injuries and her disfigured face and that she was acting as an actress in the films, TV serials, etc. that her functional disablement is

100%. This relevant aspect of the matter has been conveniently omitted to be considered both by the Tribunal as well as by the High Court while determining compensation under various heads of non-pecuniary damages. For the foregoing reasons, we are of the view that under the different heads of non-pecuniary damages she is entitled to higher compensation in her appeal. For that purpose, we are required to consider her annual income for the purpose of computation of just and reasonable compensation under the aforesaid different heads of non-pecuniary damages.”

11. In *Jithendran Vs. The New India Assurance Co. Ltd. And Ors.*, reported in *AIR (2021) SC 5382*, the Hon'ble Supreme Court observed as extracted hereinbelow-

“16..... the impact on the earning capacity for the claimant by virtue of his 69% disability must not be measured as a proportionate loss of his earning capacity. The earning life for the appellant is over and as such his income loss has to be quantified as 100%. There is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home. In such circumstances, his loss of earning capacity must be fixed at 100%. As his monthly income was Rs.4,500/-, adding 40% future prospect thereto, the monthly loss of earning is quantified as Rs.6,300/-. We therefore deem it appropriate to quantify Rs.13,60,800/- (Rs.6,300 x 12 x 18) as compensation for 100% loss of earning for the claimant. Accordingly, under this head, the amount awarded by the High Court is enhanced proportionately.

*19. Before parting, it needs emphasizing that in cases such as this, the Tribunal and the Courts must be conscious of the fact that the permanent disability suffered by the individual not only impairs his cognitive abilities and his physical facilities but there are multiple other non-quantifiable implications for the victim. The very fact that a healthy person turns into an invalid, being deprived of normal companionship, and incapable of leading a productive life, makes one suffer the loss of self-dignity. Such a Claimant must not be viewed as a modern day Oliver Twist, having to make entreaties as the boy in the orphanage in Charles Dickens's classic, "Please Sir, I want some more". The efforts must be to substantially ameliorate the misery of the claimant and recognize his actual needs by accounting for the ground realities. The measures should however be in correct proportion. As is aptly said by Justice R.V Raveendran, while speaking for the Division Bench in *Sarla Verma and Others Vs. Delhi Transport Corporation and Another MANU/SC/0606/2009: (2009) 6 SCC 121*, just compensation is adequate compensation and the Award must be just that- no less and no more. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not*

extravagant but is for seeking appropriate recompense to negotiate with the unforeseeable and the fortuitous twists is his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding 'just compensation'".

12. In the foregoing backdrop of facts and evidence in the instant case clearly shows that the impact of grievous injuries on the earning capacity of the injured has come down to zero for his entire life and as such, his loss of income has to be quantified as 100% due to permanent functional disability.

13. The guiding principle for determination of just compensation in injury case arising out of road traffic accident, may be derived from the ratio of the judgment rendered by the Hon'ble Supreme Court in *Kajal Vs. Jagdish Chand Ors.*, reported in (2020) 4 SCC 413, as extracted hereinbelow-

"5. The principles with regard to determination of just compensation contemplated under the Act are well settled. The injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as:

(i) loss of earning;

(ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges, etc.,

(iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and

(iv) loss of future earning capacity.

Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paise.

6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured

for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.”

14. The injured being self employed in the unorganized sector as a vegetable vendor and on the other hand, as there is no any uniform yardstick for determination of regular stable income from such business of selling vegetables in the market, this Court finds it reasonable to determine his income based on proclaimed minimum wage. On the date of the accident, that is, on 30.11.2014, the minimum wage was Rs. 205.19/- per day for person working in the unorganised agriculture sector and as such, monthly income of the injured as on the date of accident, may reasonably be quantified at Rs.6,156/- (rounded off) instead of Rs.5,000/-, per month, as determined by the learned Tribunal.

15. A perusal of the impugned judgment and award along with the evidence on record, it transpires that while determining the compensation on account of medical expenses incurred on the treatment of the injured, this Court finds that the learned Tribunal meticulously scrutinized each medical document produced in support of the claim and therefore, rightly determined the amount at Rs.6,31,000/- and as such, no interference is called for.

16. With regard to the future prospect of income of the injured based on the settled position of law laid down by the Hon'ble Supreme Court in *Sarla Verma (Smt.) and Ors. Vs. Delhi Transport Corporation and Anr.*, reported in (2009) 6 SCC 121; and *National Insurance Company Limited Vs. Pranay Sethi & Ors*, reported in (2017) 16 SCC 680, this Court finds that the learned Tribunal has not awarded any amount on this count. The record shows that at the time of the accident the injured was being a young unmarried youth, aged about 25 years and earned income as vegetable vendor, he had a natural future prospect to

increase income to overcome the constant price inflation of basic human needs such as essential commodities, cost of medical treatment etc. to meet dependency of the family consisting of income less mother (claimant) and sister besides his own by way of expanding/increasing the volume of vegetable business to increase his income like the employed persons whose income from salary increases every year. Therefore, in the opinion of this Court the claimant is entitled to a 30% future prospect.

17. Accordingly, after enhancement of the income as indicated above, the amount of compensation payable to the claimant/appellant may be calculated as hereunder-

1) Annual income- Rs.6,156 x 12 = Rs.73,872/-

2) Future prospect 30% $\frac{(73,872 \times 30)}{100}$ = Rs.22,161.6/-

Hence, loss of income = 73,872 + 22,161.6 x 18 (multiplier)
= Rs.17,28,604.8/-

Medical expenses : Rs.6,31,000/-

Pain suffering : Rs. 50,000/-

Loss of amenities of life : Rs. 50,000/-

Loss of income due to disability : Rs.17,28,604.8/-

Future treatment : Rs.1,00,000/-

Incidental expenses like transportation,
Spl. Food, cost of attendant, nursing etc.: Rs. 50,000/-

Total : Rs.26,09,604.8/-

Rounded off : Rs.26,09,605/-

(Rupees Twenty Six Lakhs Nine Thousand Six Hundred Five)

18. In the premises, it is provided that the claimant/appellant is entitled to a just and fair compensation of Rs.26,09,605/- (Rupees Twenty Six Lakhs Nine Thousand Six Hundred Five) only with interest @7% per annum from the date

of filing of the claim application, that is, 09.02.2016 till realization of the amount minus the amount already paid to the claimant under the original award.

19. With the above observations and directions, the judgment and award of the learned Tribunal, dated 21.06.2018 stands modified and accordingly, the appeal is allowed. No cost.

The appeal stands disposed of.

JUDGE

Anupam

Comparing Assistant